IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 1304 of 2005.
Reserved on: 18-4-2007.
Date of Decision: 04.2007.

Ankush Mahajan. Petitioner.

Versus

State of H.P. and others. Respondents.

Coram

Hon'ble Mr. Justice Deepak Gupta, J.
Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]?

For the petitioner : Mr. Hamender Chandel, Advocate

For the respondent No. l to 4 : Mr. M.S. Chandel, Advocate General with Mr. R.M. Bisht, Dy. A.G.

For the respondent No. 6: Mr. Naresh Kaul, Advocate.

Per Surinder Singh, J.

In this writ petition, the petitioner has sought the relief of setting-aside the order dated 29-11-2005 passed by learned Administrative Tribunal, Shimla in O.A. No. 3747 of 2003 titled: Kusam Lata –v- State of H.P. and others, whereby the appointment of the petitioner herein, as Primary Assistant Teacher (PAT), has been quashed, and prayed to allow him to work as PAT in Govt. Primary School Bassa Janooria, Tehsil Nurpur, District Kangra.

Feeling aggrieved and dis-satisfied by the impugned order of the learned Tribunal, the petitioner filed the instant petition on the ground that

[1] Whether reporters of the Local papers are allowed to see the judgment?

the learned Tribunal had wrongly placed reliance on the alleged certificates of the Pradhan which were issued with bias and malafides. Further, the petitioner had taken a new point in this petition that the father of the petitioner had unsuccessfully fought the election for the post of Pradhan against the respondent No.5 in the year 2000, thus actuated with malice, the respondent No.5 allegedly fabricated the false documents. It is also pointed out that there was no manipulation or cutting in the marks sheet prepared by the selection Committee. Therefore, the impugned order was based upon conjectures, hence deserves to be set aside.

In reply, the respondent No.6 has controverted the allegations and again placed reliance on Annexure-A6 dated 10.12.2003 and R4-4 dated 15.12.2003 issued by the Pradhan, respondent No.5 who was one of the Member of the Selection Committee certifying that the marks given to the replying respondent during the interview were changed which had prejudicially effected her. It was further contended that the same selection Committee Chairman in another case had awarded one mark out of 15 marks to one Ranjit Singh who was in the merit and awarded fourteen marks out of fifteen to Nisha Devi just to oust the meritorious candidates, thus selected the person of their choice. This selection was also challenged before the learned Tribunal in OA No. 3674 of 2003, which was set aside and the order was confirmed by this Court. She further stated that she is a post graduate in two subjects and also had an experience as a Lecturer and Teacher. In the interview, she was awarded four marks out of fifteen marks whereas the petitioner who has secured third division in 10+2 was awarded twelve marks out of 15 marks. Thus in view of Annexure-A6 and RJ-4 issued by one of the members of the Selection Committee informing the tampering of the marks in the

interview is sufficient ground to set aside the selection of the petitioner. Therefore, prayed for dismissal of the writ petition.

We have heard the learned counsel for the parties and have gone through the record of the selection.

As a matter of fact, the Government of Himachal Pradesh has framed a Scheme in the year 2003 known as "Prathmik Sahayak Adhyapak/Primary Assistant Teachers (PAT)" which was published in the Official Gazette on 27.8.2003, for making the appointment of Teachers in Primary Schools, on contract basis who have at least minimum qualification of ten plus two from a Board or University. The Selection Committee is comprised of S.D.O. (C) as the Chairman of the concerned Sub Division, the Pradhan Gram Panchayat concerned as Member, Central Head Teacher of the concerned Block as Member and the Block Primary Education Officer of the concerned Block as the Member Secretary.

The selection procedure is prescribed in the Policy. Vide letter No. EDN-II-1/2003 PAT, Annexure RJ-3, and the Director Education had supplemented the Scheme by issuing the following instructions:

> "Subject: Regarding appointment of PAT in Primary Schools on contract basis.
>
> Memo:
>
> This is in connection to this Directorate letter of even No. dated 30.08.2003 vide which copy of notification No. EDN-C-B (2)-4-03 dated 27.8.2003 regarding appointment of Para Teachers on contract basis under the scheme "Himachal Pradesh Prathmic Sahayak/Primary Assistant Teachers (PAT) 2003 has been sent to you.
>
> In this context, you are informed that the Govt. vide its notification No. EDN-C-B (2)-4-03 dated 01.10.2003 has revised the selection criterion (item No.8 of annexure for selection of Prathmic Sahayak/Primary Assistant Teacher (PAT) under Himachal Pradesh PAT Scheme 2003 through

Panchayati Raj Institution in partial modification of the Govt. Notification of even No. dated 27-08-2003 is as under:

8. Selection: Weightage will be given in the following manner: Criteria and the recruitment of the Prathmic Sahayak.

Procedure: Adhyapak Primary Assistant Teacher (PAT)

1) Plus two mark (Actual percentage secured) to be calculated out of 50 marks: = 50 marks.

II) Graduation and above: = 10 marks.

III) Certificate-Diploma of at least one year duration in any teacher training course from a recognized board university in JBT.B.Ed. C&V categories (Except music and Craft) = 5 marks.

IV) SC/ST/OBC: = 5 marks.

V) IRDP family: = 5 marks.

V) Physically handicapped/widow/Ex-Serviceman/disabled provided the disability is more than 40% and certificate by the medical board. = 5 marks.

VII) Unemployed Family: = 5 marks.

VIII) Personal Interview: = 15 marks

Total: = 100 marks.

As per the policy, the weightage is to be given in the following manner for recruitment to the post of PAT:

(i) Plus Two: 50 marks (Actual percentage secured) to be Calculated out of 50 marks.

(ii) Graduation: 6 marks.

(iii) Certificate: 6 marks.

Diploma of at least one year duration in any Teacher training course from a recognized Board/University in JBT, B.Sc, C & V categories (except music and Craft).

(iv) SC/ST. 10 marks.

(v) I.R.D.P. 10 marks.

(vi) Physically Handicapped etc. 5 marks.

(vii) Personal interview: 15 marks.

The Scheme aforesaid was framed to recruit Primary Assistant Teachers (PAT) through Panchayati Raj Institutions with a view to achieve the goals as laid down in the National Policy on Education, 1986 and Himachal Pradesh Compulsory Primary Education Act, 1997. Precisely, the Scheme aims at vesting more powers upon Gram Panchayats so that they are able to perform the following functions:

i) To recruit PAT to teach the Primary Classes located in the jurisdiction of the Gram Panchayats.

ii) To evaluate the performance of the PAT so appointed;

iii) To deal with the service matters/conditions relating to PAT under this Scheme;

iv) To coordinate with the department of Primary Education in the implementation of other policies of the Government devised for the Universalisation of Primary Education;

One of the objects of the said Scheme is to provide an opportunity for the educated unemployed youth of Himachal Pradesh to teach in Government Primary Schools of their villages and earn a decent honorarium as well. The said Scheme provides for recruitment and conditions of service of the said Teachers. These are appointed by the respective Gram Panchayats of the area in the Primary Schools in which the Primary School is located. They are the contractual employees of the Gram Panchayats and employees of Panchayats for all intents and purposes and have no claim for any regularization/absorption in the Government jobs. The Scheme also provides for the termination of their services by the Gram Panchayat.

The minimum essential qualification for the post of PAT is “Pass in 10+2 examination” from a Board or a University duly recognized by the H.P. Government”. It further provided that the candidates with higher

academic qualification shall also be eligible to apply and the candidates with professional qualifications in the field of education will be preferred. The candidates with requisite educational qualifications and age are eligible to apply. Whereas, preference is to be given to a candidate belonging to the same Panchayat in which the vacancy is notified, failing which candidates from other Panchayats will also be eligible. The weightage in selection is classified as given above. Personal interview carries 15 marks and the candidate is awarded the marks as calculated on the basis of the letter as quoted above

Against the aforesaid background and as per the Scheme, the petitioner, respondent No.6 Kusam Lata along with others had applied for their appointment as a 'Primary Assistant Teachers' in response to an advertisement against a vacancy in Govt. Primary School, aforesaid.

The candidates appeared in the interview before the Selection Committee after the interview was conducted by the aforesaid Committee of which respondents 3 to 5 were also the members, selected the petitioner. Respondent No.6. Kusam Lata challenged this selection by filing O.A. No. 3747 of 2003 on the ground that she had fared well in the interview and was comparatively a better candidate being more educated and experienced than the petitioner. Therefore, her rejection was wrong which smacked of malafides by the Selection Committee. She had placed reliance on the certificate of Pradhan (respondent No.5) Annexure A-6 dated 10-12-2003, who was one of the members of the selection committee. English translation of which is reproduced below:

> "**Certified that in the interview dated 28.10.03 conducted for the post of Assistant Teacher, I was also Member. In which, 10 marks out of 15 marks were given to Kusumlata. And selection of Kusumlata was**

at lst number but it is a matter of surprise that she could not be selected now.

Sd/-

Pradhan 10/12/03
Gram Panchayat,
Hathi-Dhar
The.Nurpur (Kangra) H.P."

Notice was issued by the learned Tribunal to the said Pradhan, aforesaid, who chose to remain ex-parte before the Tribunal and also in this petition before us. He was served but as noticed in the order, dated 13-1-2006,passed by this court ', because of the recent elections, the Pradhan who had given the above certificate was no more a Pradhan and was replaced by somebody else, who also did not put in appearance. Thus the respondent No.5 was proceeded exparte thereafter. The other respondents, including the petitioner herein, had contested the claim of respondent No.6.

Upon hearing the parties and going through the selection record produced before the Tribunal, observed and held as under:

"19. The marks sheet in question has been produced before us for perusal which consists of two leaves. No doubt its second leaf contains the signatures of the members of the selection committee. However, the first leaf of the marks sheet is not signed and authenticated by any of the member of the selection committee including respondent No.5. Thus, leaf No.1 apparently is capable of being prepared and substitution at a latter time because it does not contain the signatures of any of the members of the committee nor it contains any authentication of its correctness. No reason whatsoever has been assigned by the contesting respondents. No explanation as to why the first sheet of the marks is not signed/ authenticated in any manner whatsoever.

20. Thus, in the face of admission of respondent No.5 as emerges from Annexure A-6 and RJ-4 coupled with the allegations made by the applicant it cannot be said that the impugned selection was impartial and

> fair. It is apparent that the final selection made by the selection committee is the outcome of attitude of ignoring and not giving weightage to the positive aspects of the career of the applicant. Therefore, the impugned selection of respondent No.6 is vitiated and is liable to be quashed.
>
> 21. In so far as the prayer of the applicant that she be given appointment as Primary Assistant Teacher is concerned, we are of the view that in the facts and circumstances of the case such a course will not be proper. It will be in the interest of justice and fair play that respondent No.1 is directed to get the process of selection to the post in question initiated afresh so that the candidate who qualifies, appointed to the post in question is made on the basis of merit.
>
> In view of the above, this original application is partly allowed to the extent that the impugned selection and appointment of respondent No.6 as Primary Assistant Teacher is quashed and set-aside with immediate effect. Respondent No.1 is directed to initiate the process of selection for the post in question afresh in accordance with laid down norms."

As we have seen the Scheme is self-explicit and comprehensive. Keeping in mind the objectives of the scheme, we have examined the impugned order in the light of the selection record and the allegations made. The marks sheet maintained by the Selection Committee is in the Tabular form. The petitioner has been awarded 22.50 marks out of 50 marks for educational qualification, 5 marks for belonging to unemployed family and 10 out of 15 marks in the personal interview. Respondent No.6 was awarded 22.37 marks out of 50 for educational qualification, 10 marks for graduation and only 4 marks in the personal interview. It is also noticed that no candidate, except the present petitioner, was awarded more than five marks in the personal interview.

Against the aforesaid background, no doubt, it is for the Interview Committee to judge the relative merits of the candidates who are orally interviewed by it but where the facts raises a doubt on the fair selection or it is found that some illegality or patent irregularity has been committed

either in the constitution of the Committee or its procedure or malafides are proved, the Courts cannot be silent spectators and their hands are not tied to set aside or review such a selection.

We have also noticed that the marks sheet which is available in the selection record contains two leaves. The signatures of the SDO (C) and other members do appear on the second page whereas, the first page does not contain either the signatures of the Chairman or any of the members. Further there is also cuttings and over-writing in two last columns of the candidate at Sr. No.2 which is not attested or signed by any one. Thus the conclusion arrived at by the learned Tribunal cannot be termed as perverse.

However the learned counsel for the petitioner has argued that the documents Annexure-A6 and RJ-4 are manufactured which are required to be appreciated in the light of the fact that the respondent No.5 had himself brought the resolution for the appointment of the petitioner on 12-12-2003 (Annexure-R6/D) which was passed by the Panchayat consequent upon the appointment order, the petitioner had joined his duties on 15-12-2003 which was accepted by the Pradhan vide Annexure-R6/C. , since the said Pradhan was opposed in the election by the father of the petitioner in the election as aforesaid therefore, his intention was to damage him. Thus he had wrongly given the certificate Annexure-A6 and RJ-4.

We have considered this aspect of the case also. Firstly the contention of petitioner, fighting the election by his father against the respondent Pradhan and nursing malice against him is worth rejecting as this point has been taken by him for the first time only in this petition before us. It was never raised before the ld. Tribunal. Secondly; even if we exclude both the above documents altogether from consideration even

then the way selection record was maintained by the said committee does not inspire confidence in the fair selection of the candidates as already discussed above.

Thus on examination of the impugned order of the ld. Tribunal, we did not find anything worth interference. Accordingly, the petition is dismissed with a slight modification, order that as the fresh selection may take some time, the respondents shall initiate the process of selection for the post of PAT in question in accordance with the Scheme and complete it within a period of three months from today and till then, the petitioner, if not already removed, shall continue so that the students may not suffer for want of the teacher. With this modification in the order passed by the Ld. Tribunal the petition is accordingly disposed of. No order as to costs.

CMP No. 2452 of 2005.

No order in view of the disposal of the writ petition.

(Deepak Gupta), J.

April, 2007. (Surinder Singh), J.
(BM)